IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 214 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HARIBHAI GOVINDBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR YOGESH S LAKHANI for Petitioners

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/12/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties, perused the orders of the court below and the order of the Additional Sessions Judge at Rajkot in Criminal Misc. Application No.125 of 2000 dated 31-1-2000.

#. Briefly stating the facts are that a complaint was filed by one Bhaichandbhai Premchandbhai Mehta against the petitioners and their father and also against unknown persons for various offences under I.P.C. i.e. for forgery and tampering with documents and breach of trust etc.. This complaint has been filed by the said person on 25-1-2000 for offence which is alleged to have committed on 22-12-1988. The petitioners and their father Govindbhai approached to the Additional Sessions Judge, Rajkot for anticipatory bail by filing an application being Cr. Misc. Application No.125/2000. This application came to be allowed by the learned Additional Sessions Judge at Rajkot under the order dated 31-1-2000. The Court extended the benefits of section 438 of Cr.P.C. to the accused inter-alia on the condition that the Investigating Officer shall have the right to seek police remand of the petitioners and on such application being made, the competent court shall decide the remand application on merits. On 11-2-2000, the Police Officer filed an application before the learned trial court and prayed therein for remand of the petitioners. This application came to be decided by the J.M.F.C, Rajkot City, Rajkot under its order dated 11-2-2000 which was partly allowed. It was directed to the petitioners accused in the criminal complaint, to remain present before the Investigating Officer whenever asked for between 3 to 7 in the noon of 12-2-2000, 13-2-2000 and 14-2-2000. the State of Gujarat filed Criminal Revision Application No.29/2000 against the order aforesaid of the Judicial Magistrate which came to be allowed on 6-3-2000 by the learned Additional Sessions Judge, Rajkot. Hence, this special criminal application before this Court.

#. On 15-3-2000, notice was issued to the respondents and interim relief in terms of para 13 (C) has been granted which interim relief continues till this date. The mater was admitted on 20-11-2000.

#. Learned counsel for the petitioners contended that the criminal complaint filed against the petitioners and their father is nothing but only an abuse and misuse of the machinery provided under the Criminal Procedure Code. It is contended that there is a civil dispute, which is pending in many suits between the parties. re. the land in dispute and therein the document which is alleged to have been tampered with by the petitioners, has also been produced. In the civil suit, the complainant could not get the relief possibly and this criminal complaint has been filed after so many years of commission of alleged

offence as well as filing of the suit. The details of the civil suit has been given by the learned counsel for the petitioners. It has next been contended that in the facts of this case, the remand was nothing but only an attempt on the part of the complainant at the hands of the police so that the petitioners may be arrested and by adopting third degree methods they may bow down to the terms of the complainant. What Shri Lakhani submits that it is clearly an attempt on the part of the Investigating Officer to misuse the process of the Court. It has next been contended that the learned Additional Sessions Judge earlier granted the benefit of section 438 of Cr.P.C. in favour of the petitioners on the ground that civil disputes are pending between the parties and since more than 12 years within the knowledge of the complaint, the criminal complaint has been filed. Lastly, it is contended that the J.M.F.C, Rajkot has passed a just and reasonable order in which no interference could have been made by the Sessions Judge.

#. On the other hand, the counsel for the State contended that the grant of anticipatory bail is of no substance or any help to the petitioners. Similarly, other facts which has been stated re. the civil dispute is also hardly of any relevance in the present case. Learned counsel for the respondents placed much stress on the condition subject to which anticipatory bail had been granted to the petitioners. It is contended that while granting anticipatory bail to the petitioners, the Court gave right to the Investigating Officer to seek police remand of the petitioners. Accordingly, this right has been exercised and the learned trial court has not realised and appreciated the real controversy and passed such an order which is of no effect in the case.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

#. It is true that the Additional Sessions Judge, Rajkot while extending the benefits of section 438 of Cr.P.C., 1973, in favour of the petitioners put a condition that the Investigating Officer shall have a right to seek police remand of them. This condition has to be read as a whole. What the Additional Sessions Judge, Rajkot under its order dated 31-1-2000 further stated that on such an application, i.e. the application for police remand of the petitioners being made, the Competent Court shall decide the said application on merits. Learned Additional Sessions Judge, Rajkot under its order dated 31-1-2000 has given a right to the Investigating Officer to apply for the remand of the petitioner but it was left

to the learned Judicial Magistrate to decide that application on merits. From this condition, subject to which the benefits of section 438 of Cr.P.C. were extended to the petitioner it cannot be inferred as what it is contended by the learned counsel for the respondents that the learned Judicial Magistrate has to act mechanically on this application and he has no discretion except to grant the same. On filing of this application, learned Judicial Magistrate concerned has to decide this application on merits which means that he may allow this application or may reject this application or may pass any other appropriate order in the facts of the case. From this condition, it cannot be taken that the Judicial Magistrate on the application filed by the Investigating Officer for remand of the petitioners, has no option except to grant the same.

#. In the facts of this case, the possibility of making use of the Criminal court in the matter of civil dispute by the complainant cannot be overruled. The alleged offence has been committed as per the complaint itself of the complainant in the year 1988 and this complaint has been filed on 25-1-2000, which is about 12 years thereof. Leaving apart the question of limitation, in such matter, it is a fact that this complaint has been filed after 12 years of the commission of the alleged offence. The complainant filed civil suit No.654/91 against the petitioners. The plaint of that suit and the judgment ultimately give therein, are not on record but it is clear that this suit pertains to the dispute regarding this very disputed land. In the suit, the petitioners filed their written statement vide Ex.50 and copy of the writing in question in this criminal complaint i.e. dated 22-12-1988 has also been produced at Ex.52/2. This written statement has been filed by the petitioners in that suit way back on 12-2-1996 but the complainant has not filed the complaint at any point of time, till 25-1-2000. In the suit aforesaid, the complaint-plaintiff therein sought temporary injunction but that was not granted. Mandatory injunction also was sought vide Ex.12 therein but that also appears to have not been granted and, ultimately, the suit was dismissed. In the suit aforesaid, the complainant, the plaintiff therein, deposed vide Ex.57 but in the said deposition also, he has not stated that the alleged writing is tampered with or that any addition or alteration is made therein. I find sufficient merits that in the criminal complaint, that person has stated contrary facts. The petitioners filed civil suit No.149/99 for specific performance of contract and that is pending in the court. Naturally, contract means, as what learned counsel for

the petitioners suggested, the writing dated 22-12-1988. After that suit, this complaint has been filed, and, prima-facie, I am satisfied, though no final opinion can be expressed as criminal complaint is pending investigation, that the complainant now want to use the criminal proceedings for putting pressure on the petitioners to come to some settlement. Reference may also have to the civil suit filed by the complainant himself against the father of the petitioners i.e. civil suit No.200/96 and summons of the said suit for the first time was served upon the petitioners on 3-11-1999. In this suit, the complainant has sought declaration that writing which is produced at Ex.52/2 in the civil suit No.645/91 and which is subject matter of investigation in this criminal complaint is illegal and void. From these facts, I find that the dispute regarding this document is pending for adjudication between the parties before the civil court. In such matters, filing of criminal complaint, prima-facie, though nothing can be said or expressed finally as criminal complaint is pending for investigation, seems to be an abuse of the process of the Court. The complainant has all the right to raise the point which is raised in the criminal court in the civil suit i.e. the document is a forged document and in such matters only after the court has given a verdict, prima-facie on this aspect, the criminal complaint can be there and reference here may have to the provisions of section 195 and 340 of Cr.P.C.. Further, prima-facie it seems to be a case where the complainant wants to take decision on document alleging to be forged one though that document has been filed or is a part of the civil court proceedings and so far the civil court has not adjudicated upon that document and given verdict whether it is a forged document or not. In the facts of this case, the order passed by the learned Judicial Magistrate is perfectly legal and justified. Learned Judicial Magistrate is correct in his approach to pass conditional order on the application filed by the Investigating Officer for remand of the petitioners. The civil disputes between the parties are pending where this document has been made use of and relied upon, and, at this stage, this filing of the criminal complaint, though leaving apart the question which cannot be adjudicated upon on its fairness or other consideration, the Investigating Officer has no right nor it is obligation on the part of the Judicial Magistrate to accept whatever prayer made by him in the application of seeking remand of the petitioners. The discretion exercised by the learned Judicial Magistrate was perfectly legal and justified and the learned Sessions Judge's interference in the matter was not called for.

#. In the result, this special criminal application succeeds and the same is allowed and the order of the Additional Sessions Judge, Rajkot dated 6-3-2000 is quashed and set aside. Rule is made absolute accordingly.

****

zgs/-